IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.3502 OF 2004

Shri Riyaj Badshahbhai Sayyad, Applicant

Vs

State of Maharashtra, Respondent

Mr Milind Deshmukh, for the applicant.

Mr S.R.Shinde, APP for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 30th AUGUST, 2004.

PC:

1. Heard Mr.Deshmukh, learned counsel for the applicant and Mr.Shinde, learned A.P.P for the respondent.

2. The applicant has filed this application for being released on bail in C.R. No.84/04 registered at Yewat Police Station under section 302 and 504 of I.P.C. It is the prosecution case that on 22.5.2004 there was a quarrel between the applicant and the deceased in which the applicant allegedly assaulted the deceased with fist and kick blows and one of the kick blows hit the deceased on his private part which probably seems to be the cause of death. In the post mortem report, the doctor has not expressed any opinion as to the cause of death. According to the prosecution, the auto-riksha, being driven by the deceased banged against a bicycle of

the applicant and that gave rise to the quarrel. In view of this, Mr.Deshmukh, learned counsel for the applicant, submitted that even if all the allegations against the applicant are taken as true, it is clear that the crime was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage or acted in a cruel or unusual manner. I have perused the statements of the eye-witnesses and the post mortem report. The deceased suffered four abrasions, which, prima facie, appear to be superficial and simple in nature. So far the doctor has not expressed any opinion as to the cause of death and reserved his opinion. However, keeping in view the manner in which the occurrence took place and the nature of the allegations against the applicant and considering the post mortem report though I find force in the submissions of Mr Deshmukh that the offence, in any case, would not fall under section 302 IPC I would not like to express any opinion as to whether or not the crime falls under section 302, at this stage and I leave it to the Sessions Court to decide the same at the stage of trial. Keeping in view the overall facts and circumstances of the case and considering the entire material placed before me, I am inclined to enlarge the applicant on bail.

3. The applicant is directed to be enlarged on bail on his furnishing a personal bond of Rs.15,000/- with one or two sureties of the like amount to the satisfaction of the trial Court subject to the condition that he shall report the concerned police station on every Saturday between 10 am and 11 am for a period of six months and thereafter on 1st Saturday of every month between 10 am and 11 am until the conclusion of the trial.

. While allowing this application, I shall not be understood to have expressed any opinion on merits of the case. The Sessions Court shall decide the case uninfluenced by the observations made in this order.

(D.B.Bhosale,J.)